IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,

Plaintiff,

No. 2:00-CV-2041-AJS

vs.

PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual, AND JOHN HERKLOTZ, an individual,

Defendants,

WRS, INC'S RESPONSE TO MOTION FOR RECONSIDERATION OR FOR RELIEF FROM JUDGMENT FILED BY PLAZA ENTERTAINMENT, INC.

AND NOW comes, WRS, Inc., by and through its counsel, Thomas E. Reilly, with the following Response to the Motion for Reconsideration or Relief from Judgment filed by Defendant, Plaza Entertainment, Inc:

INTRODUCTION

1. The Motion filed by Plaza Entertainment, Inc (hereinafter referred to as "Plaza") fails to set forth a basis upon which relief under Rule 60(b)(6) can be granted since the Motion fails to aver any facts upon which the Court could base an understanding that Plaza has a meritorious defense to the claim of WRS.

2. The Motion filed by Plaza fails to set forth a basis upon which the requested relief can be granted because it avers that Plaza, through Parkinson allegedly first learned of the entry of the Default Judgment on May 21, 2007, but waited until January 25, 2008 to file the Motion. In light of the averred exceptional circumstances

alleged and absent any explanation for the delay, Plaza has failed to present its Motion within a reasonable time as required by. F.R.C.P. 60(b)(6).

3. The Motion fails to set forth a basis upon which the requested relief can be granted because the Motion fails to alleged that WRS will not be prejudiced in the event that the default judgment is removed and, in fact, because of the passage of time; the closing of the business of WRS; its eviction from its facility; and the fact that all of the principal employees with knowledge of the specific events that occurred over the course of the relationship between WRS and Plaza and Parkinson, except for Jack Napor and his wife, Louise Napor, have all moved on and are no longer employed by WRS, WRS submits that it will be prejudiced if the judgment is opened.

RESPONSE

1. Admitted in part and denied in part. WRS specifically denies that Gibson represented Parkinson and Plaza throughout this litigation. Rather, Parkinson filed a pro se answer on February 5, 2001. On April 24, 2001, Fred W. Freitag IV entered his appearance on behalf of Parkinson and Plaza Entertainment, Inc. (hereinafter “Plaza” after default had been entered against Plaza failing to answer WRS' Complaint. Attorney Freitag filed a Motion to set aside the Default as to Plaza, which was ultimately granted July 31, 2001. Attorney Freitag on behalf of Plaza filed an Answer and Counterclaim (Docket No. 23) to which WRS responded on August 17, 2001. (Docket No. 37). Attorney Freitag moved to withdraw as counsel for Plaza and Parkinson on September 12, 2003 (Docket no.57). His motion was denied as moot on September 15, 2003 when the District Court refused to reopen the case. (Docket No. 59). When the District Court refused to reopen this action, WRS filed a new action at 03-01398. Attorney Gibson

entered his appearance in that action on behalf of Charles von Bernuth and filed an Answer and "Counterclaim against Plaza." (03-01398, Docket No. 6) Gibson then filed a 12(b)(6) Motion to dismiss on behalf of Parkinson and Plaza. (03-01398, Docket 13) which motion was dismissed. (03-01398, Docket No. 19). Defaults were then entered as to all Defendants including Plaza and Parkinson on January 31, 2005, when Gibson represented Plaza. A round of Motions to strike the defaults followed, which were granted by Order of March 7 , 2005 (03-cv-01398 , Docket no. 34). Gibson then filed an Answer and Affirmative Defenses and Counterclaim on behalf of Parkinson and Plaza, the Counterclaim seeking an accounting of WRS debt and damages for alleged violations of Plaza's claimed copyrights in certain films. (03-03198, Docket no. 30). WRS replied to the Counterclaim. (03-01398, Docket no. 36). That case was then consolidated with 01-2041 by Order of July 29, 2005 (03-01398, Docket No. 38). All counterclaims against WRS were finally determined by the confirmation of WRS' Chapter 11 Reorganization Plan in the Bankruptcy Court for the Western District of Pennsylvania of June 23, 2005 at (Case No. 01-28759-MBM, Document No. 577.) WRS specifically denies the statements made by Gibson in the Affidavit referred to in Paragraph 1 since after reasonable investigation WRS is unable to determine the truth of the averments contained therein regarding Gibson's contact with Parkinson, individually or as Plaza's President and principal and the motivations for his action or inaction in the within matter. Said statements are, therefore, denied. However, to the extent that Gibson's Affidavit accurately describes Parkinson's dilatory payment history on behalf of Plaza, WRS asserts that it exemplified Parkinson's lax attitude to the Defense of the case as Plaza's principal.

2. Denied. The averments contained in Paragraph 2 are denied because WRS after reasonable investigation is unable to determine the truth of the averments contained in Paragraph 2 as they relate to Gibson's contact with Parkinson, either individually or as Plaza's president and principal. WRS submits that Parkinson, in hi capacity as Plaza's President and principal was apprised of Mr. Gibson's actions and acquiesced to Gibson's treatment of Plaza's defense or tacitly agreed to the manner Gibson was representing Plaza.

3. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 3. Said averments are, therefore, denied. To the extent that Parkinson, as Plaza's President and principal, was satisfied with a lack of communication from Gibson and acquiesced to the lack of communication from his chosen counsel, Plaza is bound by its president's choice of counsel and the actions and choices made by Gibson on Plaza's behalf. However, Parkinson's company Plaza had suffered one default early in this action and both Plaza and Parkinson suffered a default while represented by Gibson in the action at 03—1398 such that Parkinson, and concomitantly, Plaza were aware both of the potential for entry of a default and of Gibson's potential for lack of attention. Parkinson and Plaza were also represented by Attorney Freitag.

4. Admitted. Furthermore, Plaza was represented by attorney Freitag when the case was closed.

5. Admitted. Gibson represented Plaza in the appeal.

6. Admitted in part and denied in part. WRS admits that the status conference occurred on March 9, 2006 as averred. Gibson appeared for Parkinson, von

Bernuth and Plaza at the conference. The Court Ordered that Summary Judgment Motions for the parties who chose to file them were to be filed on or before March 23, 2006. WRS admits that the Court suggested that the parties could retain an accountant, subsequently determined to be Schneider Downs, to review WRS' records because of the Defendants' contention that the records did not accurately reflect the amounts owed by the Defendants. After discussion, Gibson indicated that neither Plaza nor Parkinson would participate in retaining the accountant but that von Bernuth would. Von Bernuth, through Gibson, WRS, and Herklotz, by their respective counsel entered into a Stipulation providing for the retention of the accountant. Said Stipulation is at Docket No. 86 and the Order entered thereon is at Docket No. 87. To the best of WRS' counsel's information, Gibson had authority from Parkinson individually and as Plaza's President to refuse to enter into the Stipulation. However, although, neither Parkinson, von Bernuth, nor Plaza, contributed to the cost of the accountant, Herklotz and WRS did pay for the accountant, who concluded that the WRS records accurately reflected the amount of the debt. Thus, while the cost born by each party might have been less if Parkinson and Plaza participated in paying the accountants, Plaza has provided no new information that would undermine the accountant's conclusion.

7. Denied. After reasonable investigation, WRS, Inc. is unable to form a belief as to the truth of the averments in paragraph 7.

8. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 8. The billing statements referred to would speak for themselves such that Plaza's characterization of the contents is hearsay and not the best evidence of the contents. Said averments are, therefore, denied. However,

throughout these proceedings documents have been served from time to time upon Parkinson at 4929 Wilshire Boulevard Suite 830, Los Angeles, CA 90010, and upon Plaza at 304 North Edinburg Street Los Angeles, CA 90048, which is believed to the address given in Parkinson's pro se Answer and at upon Parkinson and Plaza at 1722 College Avenue, Fayetteville, AR 72703. (Certificate for Service on Brief in Opposition to Motion to Dismiss, 03-cv-01398, Docket No. 12). Furthermore both Parkinson and Plaza were represented by Attorney Freitag and there is no statement concerning communications with attorney Freitag..

9. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 9. Said averments are, therefore, denied. However, it is the recollection of WRS' counsel that Gibson advised that Parkinson and Plaza had chosen not to pay the accountant's fee.

10. Admitted in part and denied in part. WRS, in fact, filed a Motion for Summary Judgment as to Charles von Bernuth at Docket Nos. 88, 89 and 90. It is WRS' counsel's recollection that at the case management conference of March 9, 2006, Gibson advised the Court that neither Plaza nor Parkinson were actively defending the case and would therefore not contribute to the retention of the accountant. After von Bernuth announced that he would not comply with the Stipulation, WRS moved for the entry of Judgment for the failure of von Bernuth to prosecute the action further. However, although, neither Parkinson, von Bernuth, nor Plaza, contributed to the cost of the accountant, Herklotz and WRS did pay for the accountant, who concluded that the WRS records accurately reflected the amount of the debt. Thus, while the cost born by each party might have been less if Parkinson and Plaza participated in paying the accountants,

Plaza has provided no new information that would undermine the accountant's conclusion.

11. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 12. Said averments are, therefore, denied.

12. Admitted.

13. Denied. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 14. Said averment is, therefore, denied.

14. Admitted.

15. Denied. The averments contained in Paragraph 16 regarding the allegations of gross neglect of professional obligations are specifically denied since WRS is unable form a belief as to the facts that allegedly support that allegation. After reasonable investigation, WRS is unable to determine the truth of the remaining averments contained in Paragraph 16 regarding Gibson's contact or lack thereof with Parkinson individually or as Plaza's President. Said averments are, therefore, denied. Furthermore, as Plaza president acquiesced in the lack of communication with Gibson or tacitly agreed with his conduct, Plaza is bound by the choices made by its chosen counsel as to its defense. Furthermore, Plaza had suffered one default early in this action and both Plaza and Parkinson suffered a default while represented by Gibson in the action at 03—1398 such that Parkinson was aware both of the potential for entry of a default and of Gibson's potential for lack of attention. This knowledge combined with Parkinson's dilatory payment history on behalf of Plaza described in Gibson's affidavit exemplified Parkinson's lax attitude to the Defense of the case a president of Plaza.

16. Admitted.

17. Denied. WRS specifically denies the allegation pertaining to the gross dereliction of duties by Gibson since that allegation is premised upon facts that WRS denies. WRS denies the remaining averments contained in Paragraph 18 regarding Gibson's notification or lack of notification to Plaza because after reasonable investigation WRS is unable to determine the truth thereof.

18. Admitted.

19. Denied. After reasonable investigation WRS is unable to determine the truth of the averments contained in Paragraph 20 as they pertain to Gibson's notification of Parkinson, individually or as President of Plaza pertaining to the judgment or the truth of the allegations set forth or statements contained in von Bernuth's Affidavit. Said statements are, therefore, denied. WRS is unable after reasonable investigation to determine whether Gibson's actions were either surprising or not surprising as alleged. Said averment is denied. It is admitted that Plaza did not move previously to reconsider the judgment, open the default judgment, and did not take an appeal from the judgment. WRS is unable to determine the truth of the averments contained in Paragraph 20 as to whether Gibson did nothing since it is possible that he refrained from doing each of the items suggested above after consultation with Parkinson as Plaza's president.

20. Admitted in part and denied in part. WRS has no independent knowledge of the email to which Paragraph 21 refers. However, based upon its review of email, WRS admits that Parkinson, individually and as president of Plaza, sent the email referred to in Paragraph 21. Furthermore, after reasonable investigation, WRS is unable to determine the truth of the averments or suggestion contained in the Motion that

Parkinson, individually or as Plaza's President was unaware of the appeal and specifically denies the same.

21. Admitted in part. Denied in part. WRS admits that the email states that Judgment had been entered and establishes that Parkinson individually and as Plaza's President knew of the judgment on May 21, 2007. After reasonable investigation, WRS is unable to form a belief that this was the first time Parkinson, individually or as President of Plaza, learned of the Judgment.

22. Denied. WRS denies the characterization of Gibson's conduct contained in Paragraph 22. WRS admits that the content of the email speaks for itself. Furthermore, based upon the prior defaults taken as to Plaza and request to enter defaults against Parkinson personally while represented both by Attorney Freitag and Gibson, Parkinson as Plaza's President knew or had sufficient reason to know that Gibson had not acted in Plaza's best interest, and that immediate action had to be taken to ameliorate the effect of Gibson's conduct.

23. Denied. The averments contained in Paragraph 23 are specifically denied by WRS to the extent that they refer to Gibson's "inexcusable dereliction in his duty to defend his clients" since said averment is based upon facts which WRS denies. After reasonable investigation, WRS is unable to determine the truth of the remaining averments contained in Paragraph 23. Said averments are, therefore, denied. Furthermore, WRS avers that Parkinson, as Plaza's President made a conscious decision to devote few if any resources to defending this case, either on his own behalf or on behalf of his company, Plaza, and that Gibson's alleged inattention was the product of Parkinson's lax and blasé attitude toward his own defense and the defense of is company.

To the extent that Parkinson received periodic statement s form Gibson, those statements contain the best evidence of the content of the communication and the fact that Plaza has not produced the statements as an exhibit precludes any hearsay evidence as to the content of the statements and permits an inference that the statements contained sufficient information as to the status of the case.

24. Admitted in part and denied in part. WRS admits the allegation that Parkinson's email notified von Bernuth of the entry of the judgment and consequently, Parkinson had specific knowledge of the entry of judgment against him on May 21, 2007. After reasonable investigation, WRS is unable to determine the truth of the averments contained in Paragraph 24 that, that was the first time von Bernuth learned of the entry of the judgment. Said averment is, therefore, denied. To the extent that the averment is intended to suggest that Parkinson or for that matter Plaza and von Bernuth acted within a reasonable time in moving forward with a Motion for Reconsideration or Relief from Judgment, said averment is specifically denied. Rather, WRS submits that the unexplained delay from May 21, 2007 to January 25, 2008, demonstrates as a matter of law that Parkinson and Plaza failed to move within a reasonable time to file the Motion for Relief from Judgment based upon Rule 60(b)(6).

25. Admitted in part. Denied in part. WRS admits that Parkinson filed the within Motion pro se. and that von Bernuth's and Plaza's Motions are similar.

26. Denied. WRS after reasonable investigation is unable to determine the truth of the averments set forth in paragraph 28. The averments are therefore, denied. By way of further answer, WRS submits that Parkinson as president and Principal of Plaza acquiesced to Gibson's management of the litigation and consciously took a lax and blase

attitude towards the case as exemplified by his dilatory history of paying Gibson which attitude was reflected in and, to some extent produced Gibson's performance.

27. Admitted in part and denied in part. WRS admits that Gibson states as quoted in Paragraph 29 in his Affidavit. WRS is unable to determine the truth of those statements or the remaining averments contained in Paragraph 29. Said averments are, therefore, denied. By way of further Answer, WRS asserts that Parkinson as president and principal of Plaza has failed to present this Motion within a reasonable time after learning of the entry of the Default judgment as early as May 21, 2007 and is accordingly precluded from the relief he requests, not withstanding the conduct of Gibson.

28. Denied. The averments contained in Paragraph 30 are specifically denied since WRS does not admit that Gibson has engaged in conduct that is "neglect of duty" as alleged or "abandonment" of his client since said averments are based upon facts, which are denied by WRS. Furthermore, WRS avers that Parkinson individually and as president and principal of Plaza acquiesced in the lack of communication, failed to pay the apparently modest invoices sent by Gibson, suffered prior defaults as to Plaza while represented by Gibson and paid little, if any, attention to the case even after learning that a default Judgment in excess of $2.5 million had been entered against him, acquiesced to or tacitly agreed with the manner that Gibson executed his duties as Parkinson's and Plaza's counsel, therefore, neither exceptional circumstances nor excusable neglect have been demonstrated, or to the extent demonstrated, Parkinson, individually and as president and Principal of Plaza failed to act within a reasonable time to request relief.

20. Denied. The averments contained in Paragraph 31 are specifically denied. WRS submits that neither Parkinson nor Plaza has a meritorious defense to the claims

made against them by WRS. WRS refers to the Responses filed to the Parkinson Affidavit submitted on behalf of WRS, Inc. (Docket No 159) rebutting the contentions contained in Parkinson Affidavit. By reason therefore, opening the default judgment at this time and requiring WRS to proceed to trial on the issues adjudicated by the default judgment will be prejudicial to WRS. WRS at the commencement of this case was a company that employed over 350 people. In May of 2006, WRS was evicted from the facility at which it maintained most, if not all, of its records, but for those records that are in the possession, or continue to be in the possession of Attorney Reilly. Furthermore, all of the employees of WRS except for Jack Napor and his wife, Louise Napor, are no longer employed by WRS, Inc. and over the past six to seven years during which this litigation has progressed have moved onto other business and other jobs. Based upon the absence of participation by Gibson and the passage of time, and Parkinson's inattention to the case, WRS respectfully submits that it will be prejudiced if the judgment against Parkinson is stricken.

30. Denied. WRS denies the averments in paragraph 30. The letter submitted by Parkinson, (Docket No 148) makes allegations purporting to support meritorious defenses. First, Parkinson suggests that the inventory of videos if sold would have had a vale of $250,000. However, Gibson on behalf of Plaza asserted in a counterclaim that WRS could not sell the videos without infringing the Plaza's copyrights. Hence, in its Complaint, WRS sought a declaration that it could sell the videos and an order foreclosing the security interest that WRS claimed in the inventory. Unfortunately, by the time the matter came before this Honorable Court, WRS had no mechanism to sell the video titles and the market for such material had passed. Second, Parkinson conjectures

that WRS replicated videos that were not ordered or must have sold the videos in sales that were not reported and charged for Services. The Services Agreement provides a charge for the services. WRS incorporates by reference, its Response to the Parkinson Affidavit, (Docket no. 159) which demonstrates the inaccuracy of Parkinson conjectures. Third, the Response to the Parkinson Affidavit, and the Schneider Downs Report refutes Parkinson's third contention that Plaza did not receive any credit for the funds WRS collected. The response demonstrates that Parkinson delayed the implementation of the lock box arrangement and the Schneider Downs Report demonstrates that WRS did distribute money to Plaza, which was credited to its debt to WRS. To the extent Parkinson refers to the Motion filed by von Bernuth, WRS incorporates by reference its responses to the von Bernuth papers at Docket 157 and 173. Plaza never pleaded and cannot as primary obligor rely on Defenses asserted by von Bernuth as Guarantor, and accordingly those defenses are waived or unavailing to Plaza. To the extent Plaza filed a Counterclaim for copyright infringement that claim dos not arise from the same transaction or occurrence as WRS claim and is now precluded by the confirmation of WRS Chapter 11 Plan of reorganization.

WHEREFORE, WRS respectfully requests that the Court deny the relief requested by Plaza Entertainment, Inc.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: _____/s/ Thomas E. Reilly______

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CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of WRS' Response to the Motion for Reconsideration or Relief from Judgment filed by Defendant, Plaza Entertainment, Inc., was delivered via first-class mail, postage pre-paid on the 6th day of February, 2008, to the following:

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BY: /s/ Thomas E. Reilly
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